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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,840	12/27/2001	Andre Jacques		3552

7590 10/04/2004

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,840

Applicant(s)

JACQUES, ANDRE

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 18-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 17-26 in the reply filed on May 5, 2004 is acknowledged. Claims 18-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Species N, M, F, H, K, L, J, C, and E, there being no allowable generic or linking claim. Note, Applicant may only elect a single species for prosecution at this time.

Claim Objections

2. Claim 17 is objected to because of the following informalities:
Line 1, delete "the entire foot of the cyclist" and insert --an entire foot of a cyclist-
Line 17, delete "shoe." And insert --shoe;--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2, the phrase "having a length to substantially extend beneath the entire foot of the cyclist" is indefinite since the approximate length of the pedal cannot be ascertained until the pedal is engaged by a cyclist. That is, the claim described the invention in terms of a particular user. Therefore, whether a device falls within the scope of the claims cannot be

Art Unit: 3764

determined until a particular user engages the device. Consequently, the claim is indefinite. Ex parte Brummer, 12 USPQ2d 1653 (BdPatApp & Inter 1989).

Claim 17 recites the limitation "the angle of inclination", "the ground", "the inside of the pedal" and "the curvature" in lines 5, 6 and 9 respectively. There is insufficient antecedent basis for these limitations in the claim.

Claim 17 discloses another clause (lines 18-22) after the period that signifies the end of the claim. This clause is unclear because its inclusion would suggests two embodiments wherein the first one shows a hole in the pedal while the second one shows a hole in the shoe for receiving an axle of the pedal. The Examiner has ignored the last clause to expedite the prosecution.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginsburg (4,915,375).

As to claim 17, Ginsberg discloses a bicycle pedal assembly comprising a pedal (30) having a length to substantially extend beneath an entire foot of a user such that the ball and heel of the user's foot is supported, a shoe, and a mechanism that allows for the control of the angle of inclination of the pedal wherein the pedal includes a curved element, fixed to the pedal, the element

Art Unit: 3764

having a shape that matches the shape of the shoe and the pedal includes an axle (horizontal part of 14) mounted in a fixed position (along the pedal) inside of the pedal parallel to the pedal surface such that the axle is approximately in the middle of the heel of the shoe (see Figs.1-3). Ginsberg does not disclose that the curved element is rigid. Ferguson discloses a similar bicycle pedal that includes a rigidly curved element for holding the foot of a user on a pedal (see Figs, 1-3). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Ginsberg's curved element rigid as disclosed by Ferguson since a rigid or flexible clip would be functionally equivalent in providing a securing means between the user's shoe and the pedal while providing an opening to facilitate ease of access in and out of the pedal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 24, 2004


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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9/29/04
